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Paper No.

COPY MAILED

APR 28 2004

In re Application of:	:	OFFICE OF PETITIONS
BANGLE et al.	:	
Application No. 10/601,306	:	DECISION DISMISSING
Filed: June 23, 2003	:	PETITION UNDER
Title of Invention: FLAT SECTION	:	37 CFR 1.47(a)
OF THE OUTER SKIN OF THE BODYWORK	:	
OF A MOTOR VEHICLE	:	

This is in response to the Petition Under 37 CFR 1.47(a), to allow the other inventors to proceed with the application on behalf of himself or herself and the nonsigning inventor. The one (1) month extension of time request is hereby granted.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)"; should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor, AND BE ADDRESSED TO petitions Attorney Derek L. Woods. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 23, 2003, without, a fully executed oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on December 19, 2003, requiring *inter alia*, a properly signed oath or declaration.

In response to the Notice, Applicant files the instant petition wherein Applicant avers that the nonsigning inventor, Anders Warming, cannot be reached to join in the application. In support of this assertion, a Statement of Ralf Frieser is filed wherein Mr. Frieser avers that the declaration and Power of Attorney and Assignment papers were sent to inventor Warming on June 25, 2003 and August 25, 2003 respectively. Mr. Frieser

further avers that he learned that inventor Warming had moved his home, and Mr. Frieser then became aware of inventor Warming's e-mail address, wherein Mr. Friesing made numerous attempts to contact inventor Warming at the email address, to no avail.

Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1), (2) and (4) set forth above.

As to item (1), if an inventor is unavailable (cannot be reached), while it is not required that the application be mailed¹, Petitioner must establish the exercise of diligent effort in trying to find or reach the nonsigning inventor. A statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. (Emphasis supplied). See, MPEP § 409.03(d). At the very least, an Internet search, or a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Copies of the results of such searches must be referred to in any renewed petition. It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

¹ It is noted that initially, Applicant mailed only the Declaration and Power of Attorney and Assignment papers to inventor Warming for signature. Applicant is advised that 37 CFR 1.47(a) provides for two situations that allow inventors to proceed with the application on their own behalf and on behalf of a nonsigning inventor: one, as here, where an inventor cannot be found or reached after diligent effort, the other where an inventor refuses to join in an application after having been presented with the application. Applicant is advised that, where it is alleged that an inventor refuses to join in an application, before refusal can be alleged, the entire application must be sent to the nonsigning inventor. "A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers." See MPEP 409.03

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: 2201 South Clark Place
Customer Window
Crystal Plaza Two, Lobby Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.


Derek L. Woods

Petitions Attorney
Office of Petitions